



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### PIEDMONT REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Michael P. Murphy  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
FDP VIRGINIA, INC.  
FOR  
FDP BRAKE PRODUCTION PLANT  
UNPERMITTED STORMWATER DISCHARGE**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and FDP Virginia, Inc., regarding the FDP Brake Production Plant, for the purpose of resolving certain violations of the State Water Control Law and applicable Regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
8. "EPA" means Environmental Protection Agency.
9. "Facility" or "Site" means the FDP Brake Production Plant located at 1076 Airport Road, Tappahannock, Virginia.
10. "FDP" means FDP Virginia, Inc., a corporation authorized to do business in Virginia and its affiliates, partners and subsidiaries. FDP is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such

alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

15. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
16. "Registration statement" means a registration statement for coverage under a storm water general permit.
17. "Regulation" means "The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity," 9 VAC 25-151-10, *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "SWP3" means Stormwater Pollution Prevention Plan.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. FDP owns and operates the Facility located at 1076 Airport Road, Tappahannock, Virginia, which discharges stormwater associated with industrial activity. FDP is a drum and disk brake manufacturing business that manufactures, packages, and ships brakes to numerous large automotive parts suppliers around the country.
2. On February 3 and 5, 2015, the Virginia Department of Environmental Quality (DEQ) conducted an unannounced compliance evaluation inspection (CEI) at the Facility. The inspection was conducted to evaluate compliance with applicable Virginia Hazardous Waste Management Regulations (VHWMR). DEQ staff observed approximately (500) 55-gallon containers of un-labelled waste, later determined to be a mixture of hazardous and non-hazardous wastes, throughout the Facility. DEQ staff further observed that the un-labelled containers were exposed to the elements, in some instances, uncovered and a few containers that were bulging and showing evidence of leaking. During the inspection the type of waste in each container was undetermined.



3. On March 12, 2015, DEQ staff conducted an inspection of the Facility and observed stormwater discharges leaving the Facility property and discharging to a dry ditch that drains toward an unnamed tributary, then to Hoskins Creek and ultimately the Rappahannock River.
4. At the time of the February 3 and 5, 2015 and March 12, 2015 inspections, FDP did not have a permit to discharge stormwater associated with industrial activity from the Facility.
5. The unnamed tributary of the Rappahannock River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
6. The receiving stream is located in the Rappahannock River Basin. During the 2012 305(b)/303(d) Integrated Water Quality Assessment, the tributary was not assessed for any designated use; it was therefore considered a Category 3A waterbody. The Facility is within the study area for the Upper Rappahannock River Shellfish Bacterial Total Maximum Daily Load (TMDL) (EPA approval August 10, 2010, Board approval December 31, 2010). The discharge was not addressed in the TMDL. Other stormwater industrial permits were included in the TMDL, but the holders of those permits (or some of those holders) did not receive wasteload allocations because their operations were not a source of fecal bacteria. The Chesapeake Bay TMDL, which was approved by the EPA on December 29, 2010, addresses dissolved oxygen and submerged aquatic vegetation (SAV) impairments in the Chesapeake Bay and its tidal tributaries by allocating total nitrogen, total phosphorus, and total suspended solids to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. All applicable, regulated industrial stormwater general permits were assigned aggregated wasteload allocations. The dry ditch would be considered Tier 1 due to its ephemeral nature.
7. VA Code §62.1-44.16 states that "Any owner who erects, constructs, opens, reopens, expands or employs new processes in or operates any establishment from which there is a potential or actual discharge of industrial wastes or other wastes to state waters shall first provide facilities approved by the Board for the treatment or control of such industrial wastes or other wastes. Application for such discharge shall be made to the Board and shall be accompanied by pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and details satisfactory to the Board."
8. The Regulation, at 9 VAC 25-151-60 B. states "An owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for discharges of stormwater associated with industrial activity."
9. On May 14, 2015, the Department issued NOV No. 2015-05-PRO-201 to FDP.

10. FDP responded to the Notice of Violation by, among other things, submitting a registration statement on March 18, 2015, requesting coverage under the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater Associated with Industrial Activity. The registration statement was considered complete and accepted by the Department on August 11, 2015. FDP does not generate or treat industrial wastewater at the Facility.
11. On July 8, 2015, the Department met with FDP to discuss the findings of the February 3 and 5, 2015 and March 12, 2015 inspections, the May 14, 2015 NOV, and the issuance of this Consent Order.
12. Based on the results of the February 3 & 5, 2015 and March 12, 2015 inspections, the July 8, 2015 meeting, and the VPDES Permit application submitted on March 18, 2015, the Board concludes that FDP has violated the Code and the Regulation, as described above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders FDP, and FDP agrees to pay a civil charge of \$5,650 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

FDP shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, FDP shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of FDP for good cause shown by FDP, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any

action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, FDP admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact, and conclusions of law in this Order.
4. FDP consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. FDP declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by FDP to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. FDP shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. FDP shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. FDP shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and FDP. Nevertheless, FDP agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after FDP has completed all of the requirements of the Order;
  - b. FDP petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to FDP.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve FDP from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by FDP and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of FDP certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind FDP to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of FDP.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, FDP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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Michael P. Murphy, Regional Director  
Department of Environmental Quality

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FDP Virginia, Inc. voluntarily agrees to the issuance of this Order.

Date: 8-10-16 By: William R. Carney V.P.  
(Person) (Title)  
FDP Virginia, Inc.

~~Commonwealth of Virginia~~, State of NJ

City/County of Camden

The foregoing document was signed and acknowledged before me this 10<sup>th</sup> day of

August, 2016, by William R. Carney who is

V.P. of FDP Virginia, Inc., on behalf of the corporation.

Kathleen Nelson  
Notary Public

2448515  
Registration No.

My commission expires: 8/1/2019

Notary seal:

